

**United States Department of Labor
Employees' Compensation Appeals Board**

J.O., Appellant

and

**DEPARTMENT OF THE ARMY, BROOKE
ARMY MEDICAL CENTER, San Antonio, TX,
Employer**

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**Docket No. 14-511
Issued: June 2, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 6, 2014 appellant filed a timely appeal from a December 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On March 12, 2013 appellant, then a 65-year-old supply technician, filed an occupational disease claim (Form CA-2) alleging that he sustained injuries, including dizziness, diarrhea and low back pain, as a result of his federal employment. He stated on the claim form that he was exposed to liquid nitrogen and exhaust from forklifts and had to carry nitrogen tanks.

¹ 5 U.S.C. § 8101 *et seq.*

In an undated statement, appellant reported that he had been exposed to liquid nitrogen for over one year and exhaust from forklifts for over six years. He indicated that he had intermittent dizziness on a daily basis and his low back pain had worsened over time. The record contains a “material safety data sheet” for liquid nitrogen and a copy of the position description for supply technician. Appellant also submitted an Occupational Safety and Health Association (OSHA) publication on carbon monoxide.

By letter dated March 19, 2013, OWCP requested that the employing establishment submit any relevant evidence regarding appellant’s allegations. The employing establishment submitted memoranda indicating that internal air quality (IAQ) investigations were performed on May 19 and June 26, 2009, May 3 and 4, 2012, and March 7, 2013. The 2009 IAQ investigations were concerned with carbon monoxide from propane-powered equipment and found a maximum carbon monoxide level of 37 parts per million (ppm) when two propane-powered forklifts were operated. The OSHA permissible maximum was 50 ppm over an eight-hour time period. The 2012 investigation reported no carbon monoxide. As to the March 7, 2013 investigation, the memorandum provided background information indicating that appellant had reported complaints of difficulty breathing and associated chest pain while performing regular duties in the warehouse. The memorandum stated that carbon dioxide levels were within recommended guidelines, with no evidence of water intrusion or mold growth and concluded that no significant health hazard existed.

In an undated letter received by OWCP on April 9, 2013, the employing establishment controverted the claim for compensation. It stated that the liquid nitrogen was transported in cylinders exposure could only occur if the cylinder was mishandled or intentionally opened. According to the employing establishment, during all transports, appellant wore approved cryogenic gloves and a full face shield mask. With respect to any alleged exposure to carbon monoxide, it stated that there was no evidence of harmful exposure.

With respect to medical evidence, appellant submitted a February 4, 2013 report from Dr. Grover Yamane, an employing establishment physician, who stated that appellant was seen for an evaluation regarding exposure to liquid nitrogen. Dr. Yamane reported that appellant had a prior low back injury at work in August 2012,² with a four- to five-month history of dizziness and diarrhea. The report states that appellant was “out of the environment” since approximately December 2012, and was currently not exposed to chemicals. With respect to complaints of vertigo and diarrhea, Dr. Yamane opined, “Doubt these are due to nitrogen gas, forklift exhaust exposures in warehouse.”

In a report dated February 11, 2013, Dr. Layra Canales, an emergency room specialist, stated that appellant had complaints of back pain since a work injury on August 21, 2012, and complained of dizziness, nausea and diarrhea from inhaling smoke produced by forklifts. He provided results on examination

By report dated March 7, 2013, Dr. Yamane stated that appellant had a “reinjury of LB [lower back] area” from pushing/pulling a heavy load at work, noting that appellant had a compensation claim from 2012. He provided results on examination, noting tenderness in the lumbar area.

² The record indicates that appellant has an accepted prior claim for a traumatic injury on August 21, 2012.

In a decision dated June 21, 2013, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish an injury causally related to federal employment.

Appellant requested a review of the written record by an OWCP hearing representative. He submitted a May 9, 2013 report from Dr. Yamane stating that appellant was seen for low back pain.

By decision dated December 12, 2013, the hearing representative affirmed the June 21, 2013 OWCP decision. The hearing representative found the evidence of record was insufficient to establish the claim.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁶ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁷ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁸

ANALYSIS

As the above legal precedent indicates, a claim for compensation must include a factual statement identifying the employment factors alleged to have caused or contributed to an

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁶ See *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *Id.*

employment injury. In this regard, appellant has discussed exposure to substances at work: (1) liquid nitrogen, and (2) exhaust from forklifts. He also submitted some information regarding carbon monoxide, although he did not provide specific information regarding an alleged exposure to carbon monoxide at work. Appellant has also alleged that lifting and carrying at work contributed to a lumbar injury.

Appellant did not submit a detailed factual statement regarding the alleged exposure to liquid nitrogen or exhaust fumes at work. There does not appear to be any question that he worked with containers of liquid nitrogen. The employing establishment indicated that appellant would not have any direct exposure to liquid nitrogen, as it was enclosed in the containers and he wore protective clothing. The evidence of record, however, establishes only that he worked with containers of liquid nitrogen and sometimes was involved in transporting such containers.

With respect to fumes from forklifts, appellant again did not provide a detailed factual statement as to the nature and extent of such exposure. It is not contested that he worked on forklifts at times, and according to the IAQ memoranda the forklifts were propane powered. The frequency and circumstances under which appellant was exposed to any fumes from forklifts was not discussed in any detail in his factual allegations. As to exposure to carbon monoxide, he provided no factual statement or allegations. The evidence provided from the employing establishment did not establish that there was a consistent exposure to carbon monoxide.

To establish the claim for compensation, the medical evidence must include a rationalized medical opinion, based on an accurate background, on causal relationship between a diagnosed condition and the identified employment factors. In his February 4, 2013 report, Dr. Yamane expressed “doubt” as to causal relationship between appellant’s complaints of dizziness and diarrhea and any exposure to liquid nitrogen or forklift fumes. This report does not support a finding of causal relationship in this case. There are no medical reports of record that include an accurate factual background and a rationalized medical opinion with respect to a condition causally related to the established exposure to chemical substances at work.

Appellant’s claim also referred to a low back injury from lifting at work. Once again his factual allegation provided little detail on the nature and extent of lifting and carrying he actually performed at work. The record indicated that appellant had a prior traumatic injury claim for the low back on August 21, 2012. Dr. Canales indicated that appellant had reported back pain since that date. He did not discuss continuing employment incidents since that date or provide an opinion on causal relationship between a diagnosed lumbar condition and federal employment. Dr. Yamane noted a “reinjury” in his March 7, 2013 report, but it is not clear whether the pushing/pulling a heavy load was referring to the prior August 2012 incident or to a new incident at work. There was no rationalized medical opinion establishing a new lumbar injury resulting from lifting or carrying at work.

It is appellant’s burden of proof to establish his claim for compensation. For the reasons discussed, the Board finds that he did not meet his burden of proof in this case.

On appeal, appellant states that he disagrees with OWCP and has additional evidence to submit. The Board can review only evidence that was before OWCP at the time of the December 12, 2013 decision.⁹

⁹ 20 C.F.R. § 501.2(c)(1).

Appellant may submit new evidence or argument with a written application for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established an injury due to exposure or lifting at work.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 12, 2013 is affirmed.¹⁰

Issued: June 2, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ Effective May 19, 2014, Patricia Howard Fitzgerald was appointed Acting Chief Judge.